

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MITCHELL W. WAGNER,	§	
TDCJ ID No. 01543049,	§	
SID No. 02396387,	§	
Previous TDCJ ID Nos. 00875647,	§	
00995563,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:15-CV-177-C
	§	
TEXAS DEPARTMENT OF CRIMINAL	§	
JUSTICE, <i>et al.</i> ,	§	
	§	
Defendants.	§	

Order

Before the Court is the Report and Recommendation of the United States Magistrate Judge entered on October 16, 2018, and "Plaintiff[s] Objections to the Magistrate Judge Recommendations Report" filed on November 1, 2018. In his Report and Recommendation the Magistrate Judge recommends that the Court find:

(1) Defendant Baldwin's Partial Motion to Dismiss (Doc. 40) should be GRANTED, such that all of Plaintiff's claims under the Texas Religious Freedom Restoration Act (TRFRA) should be DISMISSED for lack of jurisdiction;

(2) Plaintiff's Motion for the State to Produce All Defendants' Addresses (Doc. 62), and Plaintiff's Motion for Summary Judgment for Failure to Appear (Doc. 63), should be DENIED; and

(3) Plaintiff's claims, other than his claims under the TRFRA, against the remaining unserved Defendants, namely Archie D. Scarborough, Keith F. Meeks, Richard Burgess, James

Finley, Clayton Wheeden, and the Texas Kairos Organization, should be DISMISSED without prejudice under Federal Rule of Civil Procedure 41(b).

The Court conducted a de novo review of the relevant portions of the Report and Recommendation and finds that the findings and conclusions of the Magistrate Judge are correct. The Court therefore ADOPTS them as the findings and conclusions of this Court and OVERRULES the Plaintiff's Objection.

The Court further finds that although Defendant Stanley J. Baldwin responded to Plaintiff's complaint by filing his Partial Motion to Dismiss, he has utterly failed to file a sufficient answer or other responsive pleading pursuant to Fed. R. Civ. P. 8(b) as to Plaintiff's complaints that Defendant Baldwin violated Plaintiff's right to practice his religion pursuant to the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and that he subjected Plaintiff to racial discrimination in violation of the Fourteenth Amendment. Consequently, the Court finds that Defendant Baldwin shall have twenty (20) days to file an answer or other responsive pleading pursuant to Fed. R. Civ. P. 8(b) regarding those remaining claims. The Court will enter a Scheduling Order upon receipt of such responsive pleading.

It is therefore ORDERED:

(1) Defendant Baldwin's Partial Motion to Dismiss (Doc. 40) is GRANTED, and Plaintiff's claims against all of the Defendants under the Texas Religious Freedom Restoration Act (TRFRA) are **dismissed with prejudice** for lack of jurisdiction.

(2) Plaintiff's Motion for the State to Produce All Defendants' Addresses (Doc. 62), and Plaintiff's Motion for Summary Judgment for Failure to Appear (Doc. 63), are DENIED.

(3) Plaintiff's federal claims against the unserved Defendants Archie D. Scarborough, Keith F. Meeks, Richard Burgess, James Finley, Clayton Wheeden, and the Texas Kairos Organization, are DISMISSED without prejudice under Federal Rule of Civil Procedure 41(b).

(4) Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds that there is no just reason for delay in entering final judgment and judgment shall be entered accordingly.

(5) Defendant Stanley J. Baldwin shall, within twenty (20) days of the date of this Order, file an answer or other responsive pleading pursuant to Fed. R. Civ. P. 8(b) regarding Plaintiff's claims raised under the First and Fourteenth Amendments, and the RLUIPA.

Dated January 25, 2019.



SAM R. CUMMINGS
Senior United States District Judge